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10/560,487	12/12/2005	Wolfgang Orgeldinger	SCHO0590	3136

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GLENN PATENT GROUP  
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EXAMINER
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CASTELLANO, STEPHEN J

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/560,487  
Filing Date: December 12, 2005  
Appellant(s): ORGELDINGER, WOLFGANG

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Michael A. Glenn  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed February 4, 2011 appealing from the Office action mailed July 2, 2010.

**(1) Real Party in Interest**

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The following is a list of claims that are rejected and pending in the application:

Claims 12-14, 16 and 17 are rejected.

Claims 12-14 and 16-23 are pending.

**(4) Status of Amendments After Final**

The amendment after final filed on September 20, 2010 has not been entered. The claims were resubmitted but there were no claim amendments. The drawing amendment was deemed to include new matter.

**(5) Summary of Claimed Subject Matter**

The examiner has no comment on the summary of claimed subject matter contained in the brief.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner.

Art Unit: 3781

**Issue 1:**

Claims 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heymann et al. (4527707) (Heymann) in view of Sluiter (2002/0033392).

**Issue 2:**

Claims 12-14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutch reference No. (NL 9300986) in view of Sluiter (2002/0033392).

**Issue 3:**

Claims 12-14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutch reference No. (NL 9300986) in view of Sluiter (2002/0033392) and Heymann.

**Issue 4:**

Claims 12, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuhns (4460214) in view of Sluiter (2002/0033392).

**Issue 5:**

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dutch reference No. (NL 9300986) in view of Sluiter (2002/0033392) as applied to claim 12 above, and further in view of Sterett (5361906).

**(7) Claims Appendix**

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

Art Unit: 3781

**(8) Evidence Relied Upon****US Patents:**

5,361,906	STERETT	11-1994
4,527,707	HEYMANN et al.	7-1985
4,460,214	KUHNS	7-1984

**Foreign Patent:**

NL 9300986	Netherlands	1-1995
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**PG Publication:**

2002/0033392	SLUITER	3-2002
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**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

**Issue 1:**

Claims 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heymann et al. (4527707) (Heymann) in view of Sluiter (2002/0033392).

Heymann discloses a transport container system comprising a crate and a unitary top, the crate has fasteners 20 for attaching the top in the embodiment shown in Fig. 1-3. Heymann discloses the invention except for the natural material of the top being wood or cardboard. Sluiter teaches wood material in the top 5. It would have been obvious to modify the material composition of the top to be wood to lighten the weight of the top and to make the top from a degradable or reusable material to conserve resources.

Art Unit: 3781

The lateral walls of Heymann's crate define a lattice insofar as disclosed by applicant's drawings that only one recess need to be provided for the fastening means to engage the lateral walls of the crate.

If it should be deemed that the lateral walls of the Fig. 1-4 embodiment of Heymann's crate fail to be structured to define a lattice, then Heymann additionally discloses a lattice structure. Heymann teaches a wire rack 58 in the embodiment of Fig. 9. The wire rack 58 is a lattice structure that has a network of openings with an end wall, four lateral walls and an open end. Fasteners (C-shaped clips 56) are shown that releasably attach to the lateral walls of the wire rack and attach the lateral walls to a bottom member 44. It would have been obvious to replace the crate and fastener of the Fig. 1-4 embodiment with the wire rack 58 and fastener 56 of the Fig. 9 embodiment to provide a crate having lattice structure that is lighter in weight, stronger and allows for ventilation of the interior of the crate.

### **Issue 2:**

Claims 12-14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutch reference No. (NL 9300986) in view of Sluiter (2002/0033392).

NL ('986) discloses a transport container system comprising a crate and a unitary top that has fold lines at its corners for collapsing into a compact configuration, the top has fasteners (tongues 5) for attaching to the crate. NL ('986) discloses the invention except for the natural material of the top being wood or cardboard. Sluiter teaches wood material in the top 5. It would have been obvious to modify the material composition of the top to be wood to lighten the weight of the top and to make the top from a degradable or reusable material to conserve resources.

Art Unit: 3781

The lateral walls of the NL ('986) crate define a lattice insofar as disclosed by applicant's drawings that only one recess need to be provided for the fastening means to engage the lateral walls of the crate. NL ('986) discloses recesses 7 on the lateral walls.

Re claim 17, the top has corner fold lines. The bottom face opening of the top conforms in shape (rectangular) to the crate opening formed by the lateral walls. The stacking profile doesn't specify any definitive shape. Therefore, a planar profile wherein the entire upper edge is within the same horizontal plane reads on the profile. NL ('986) discloses a planar profile wherein the entire upper edge is within the same horizontal plane.

**Issue 3:**

Claims 12-14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutch reference No. (NL 9300986) in view of Sluiter (2002/0033392) and Heymann.

NL ('986) and Sluiter are applied as stated in the above rejection. The teachings of Heymann are added if it should be deemed that NL ('986) doesn't adequately disclose the lattice structure. Fig. 9 of Heymann discloses a wire rack 58 and a fastener 56. The bottom crate and fastener of NL ('986) are replaced with the wire rack 58 and fastener 56 of Heymann to provide a crate having lattice structure that is lighter in weight, stronger and allows for ventilation of the interior of the crate.

**Issue 4:**

Claims 12, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuhns (4460214) in view of Sluiter (2002/0033392).

Kuhns discloses a transport container system comprising a crate (wagon) and a unitary top (walls 24) with corner stiffeners (sheet metal angle iron 46), the crate has fasteners (bolts 32)

Art Unit: 3781

for attaching the top. The lateral walls of the crate (wagon) define a lattice structure (ladder) at the front of the wagon as shown in Fig. 1. The fasteners (bolts 32) are attached to the top (see attachment of flange 28 to wall 24, both 24 and 28 are considered the lateral wall of the top) and are releasably engageable with the lateral walls (lateral walls includes walls 12, inwardly extending flanges 30 and ladder) of the crate (see Fig. 3). Kuhns discloses the invention except for the natural material of the top being wood or cardboard. Sluiter teaches wood material in the top 5. It would have been obvious to modify the material composition of the top to be wood to lighten the weight of the top and to make the top from a degradable or reusable material to conserve resources.

**Issue 5:**

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dutch reference No. (NL 9300986) in view of Sluiter (2002/0033392) as applied to claim 12 above, and further in view of Sterett (5361906).

The combination discloses the invention except for the irregular surfaces. Sterett teaches an irregular lower edge below the crate bottom and irregular edges on the lateral walls of the top capable of being received in mating engagement with the irregular lower edges of the crate. It would have been obvious to modify the edges in order to provide mating engagement and stable stacking of a plurality of systems each having a crate and a top.

**(10) Response to Argument**

**Issue 1:**



Art Unit: 3781

Appellant narrows the argument to an issue of claim language interpretation. In the statement of rejection of claims 12 and 14 as being unpatentable over Heymann in view of Sluiter, the examiner states:

“The lateral walls of Heymann’s crate define a lattice insofar as disclosed by applicant’s drawings that only one recess need to be provided for the fastening means to engage the lateral wall of the crate.” (see final Office action, page 3, last paragraph)

The term “lattice” is given a broad, reasonable interpretation which includes an interpretation of the lateral walls having a minimal number of openings to accommodate the fasteners in a releasable engagement with the lattice structured lateral walls. The walls could have as few as only two openings.

Appellant provides the following Dictionary.com reference:

Lattice is defined as a noun:

1. a structure of crossed wooden or metal strips usually arranged to form a diagonal pattern of open spaces between the strips.

A lattice could have as few as two crossing strips which form spaces or openings. It is believed that appellant doesn’t recognize the breadth of the term “lattice.”

Appellant fails to realize or mention that Heymann teaches a lattice structure in Fig. 9. Appellant has no response to rebut this fact. Appellant attempts to gloss over one of the central issues of the obviousness rejection that it would have been obvious to change the lateral wall structure to be a lattice of crossed wooden or metal strips arranged to form spaces between the strips as shown in Fig. 9 of Heymann.

Art Unit: 3781

Appellant's attempt to rebut the combination of Heymann and Sluiter is half-hearted and appellant merely states that the examiner has not explicitly provided evidence of an apparent reason for combining the cited references in the manner claimed (see brief, page 12, lines 9 and 10). It is not understood whether the claimed subject matter is believed to still be the lattice structure or some other structure. It is not understood if this remark is directed towards the combining of Heymann and Sluiter specifically because neither reference is mentioned. The examiner provided motivation (reason for combining) in combining Sluiter with Heymann.

**Issues 2-5:**

Appellant provides no additional reasoning in addition to the reasoning submitted for the Issue 1. Appellant provides no reasoning why Dutch reference (NL 9300986) would have a different patentability outcome than Heymann. Appellant provides no rebuttal of the Kuhns in view of Sluiter rejection and the lattice structure cited in Kuhns.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 3781

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Stephen Castellano/

Stephen Castellano

Conferees:

/Anthony Stashick/

Supervisory Patent Examiner, Art Unit 3781

/Nathan J. Newhouse/

Supervisory Patent Examiner, Art Unit 3782